



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/168250

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on October 7, 2015, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for speech and language therapy.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By written submission of [REDACTED], MA CC SLP  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Marathon County. She is certified for MA.

2. On May 27, 2015, a prior authorization request was submitted on the petitioner's behalf for speech and language therapy (SLT) services. Service was sought at the level of once weekly for 12 weeks beginning May 26, 2015. Following receipt of additional information, the Division issued written notice of denial on July 14, 2015.
3. The Division's bases for denial of the requested service were that (1) the petitioner receives sufficient SLT services through her school to meet her needs, (2) the provider has not coordinated services with the school SLT program, and (3) adequate performance baseline information was not supplied in the authorization request.
4. The petitioner, age six, lives in a private residence with her family. Her diagnoses include chromosomal anomaly (translocation of chromosomes 3 & 6), visual and hearing impairment, and Mixed Expressive and Expressive Language Disorder. Due to the anomaly, she has dysmorphic facial features. Private duty nursing services are provided daily. She has received SLT, physical therapy and occupational therapy through her school during the school year. She was previously authorized for 14 SLT sessions by MA in 2014. In 2014, her prior provider found her baseline scores to be at an age equivalency of 8 months for auditory comprehension, and 8 months for expressive communication. The petitioner has also received once weekly services from the requesting provider since January 2015, including some sessions during the summer. If tested on the [REDACTED] Infant-Toddler Language Scale, her scores would have basically been zero in 2014 and 2015. As of January 2015, her response to verbal cues was characterized by the provider as "minimal."
5. The provider's services have and will include parent coaching for extensive home follow-up. The private provider's goals on the prior authorization request in question appear to be as follows:
  1. *Auditory repetition of familiar 3-4 word phrases.*
  2. *Establish vocal turn-taking.*
  3. *Establish simple one word vocabulary.*

The Department asked for goal clarification during its evaluation, and received the following response from the provider: *Measureable goals include increased responsivity to verbal initiations (25%); reciprocal attention to people and/or objects (15%); and the emergence of babbling several syllables (ma-ma; ba-ba) in addition to a wider variety on non-vegetative utterances such as vowel sounds.*

6. The petitioner continues to receive SLT at her school during the school year. The school has documented that, as of January 2015, the child "demonstrates her preference for an item completely through facial expressions and crying; she does not initiate grabbing objects independently." Her head banging occurred daily. Service coordination has occurred between the requesting provider and the school speech therapist. The school's SLT goals are as follows:
  1. C will demonstrate her preference by making a purposeful choice from a field of two familiar 2-dimensional objects 2 times in a 20 minute period on 3 separate days.
  2. C will use vocalizations/gestures/signs and/or voice output to request "more" (of an object or continuation of an activity) or to request "stop" to end an activity 2 times in a 20 minute period on 3 separate days.
  3. C will increase her receptive (understanding of ) communication by following commands such as "stop" and "do this..." ("put on," "put in,") 2 times in a 20 minute period on 3 separate days, when provided with verbal and visual/gestural cues.

School therapy is provided once weekly (three out of four weeks), but was not provided during the summer. The petitioner did receive some SLT services from the requesting provider during the summer of 2015

7. In January 2015, the child did not respond (*e.g.*, turn towards speaker) to communication from anyone other than her mother. By the time of hearing, the petitioner would nonverbally respond to persons other than her mother, and was able to respond to questions in private therapy and at home with “yes.” In January 2015, the child would not take turns with a toy; currently she will take two turns. Also, her head banging has diminished since January.

### DISCUSSION

Speech and language therapy (SLT), as defined at Wis. Admin. Code §DHS 107.18(1), is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code §DHS 107.18(2). In determining whether to approve such a therapy request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above. In the absence of evidence to the contrary, I will assume that the therapist intended to spend equal amounts of time on all unmet goals herein.

The petitioner’s provider, Dr. [REDACTED], testified to his coordination with the petitioner’s school therapist. Based on that testimony, I am satisfied that adequate coordination is occurring.

The Division legitimately expressed dissatisfaction with the provider’s failure to document the child’s baseline skills in 2015. Some baseline information was elicited from the provider at hearing. The provider stated that he counts the number of communication initiation signals from the child at each session, and that the number of those signals have increased at least 25% in therapy. If so, he should be putting that count information in the prior authorization request, or put in some other baseline metrics. Although I have accepted the provider’s testimony regarding the child’s baseline performance, not all of the administrative law judges are this flexible. The provider risks rejection of future authorization requests by the Division and by administrative law judges if more quantification/objective measurement of improvement is not provided. By way of comparison, I note that the school therapist managed to put sufficiently specific, quantified communication goals in the IEP.

The Division also argued that the petitioner receives SLT services through her school, so there is not a need for the requested therapy, as there are other available services that can be effectively and appropriately used. *See*, § DHS 107.02(3)(e)7. This generic standard for service approval is sometimes “short-handed” to a test of “duplication” of services. However, exact duplication of goals is not what is required by this standard. Rather, this reviewing standard causes the reader to consider whether, if the patient is taking advantage of available, appropriate services offered in other venues, the requested private therapy is still needed. In this case, the petitioner’s school SLT therapy goals (increase receptive communication by following commands, demonstrate preference by making choices, communicating a request to “stop” an activity) appear to be working on the same end result as the provider’s goal of increased response to verbal initiations and reciprocal attention to people/objects. Also, the provider’s goal of increasing babbling and vowel sounds is covered by the school’s more general goal of increasing the child’s use of vocalization, gestures, signs or voice output device. Thus, there is a duplication of goals, and authorization was correctly denied. Although this case may seem to be the same as a parallel authorization case for the petitioner’s brother (Decision No. 168247), there is an important distinction. In

the brother's case, the school only worked on expressive communication through a voice output device, while the private therapy worked on the child's vocal output.

### **CONCLUSIONS OF LAW**

1. The Division correctly denied the petitioner's prior authorization request for 12 SLT sessions due to lack of medical necessity; medical necessity was not present because the child's school was adequately working on the same speech and language goals.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

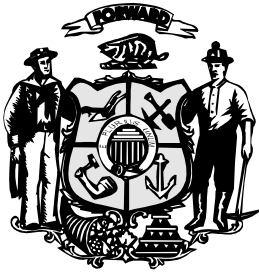
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 24th day of November, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 24, 2015.

Division of Health Care Access and Accountability